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Letter dated 29 March 2001 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a letter dated 29 March 2001, addressed to you by His Excellency Mr. Aytuğ Plümer, Representative of the Turkish Republic of Northern Cyprus (see annex).

I should be grateful if the text of the present letter and its annex would be circulated as a document of the General Assembly, under agenda item 64, and of the Security Council.

(*Signed*) Umit **Pamir**
Ambassador
Permanent Representative

Annex to the letter dated 29 March 2001 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I am writing to you in reference to the issues raised in the letter of 14 February 2001 addressed to you by the Greek Cypriot representative at the United Nations (A/55/784-S/2001/136).

Although the necessity of obtaining the consent of both parties for the United Nations Peacekeeping Force in Cyprus (UNFICYP) has been dealt with extensively in another letter I am addressing to you, I would first like to touch upon it in order to register my Government's position.

I wish to recall that, until June 2000, in one way or another, the consent of both parties was sought and registered by the Security Council. This was in line with the United Nations principle that peacekeeping in any area of the world is conducted with the consent of the parties involved. This United Nations principle was recently stated by the former UNFICYP Chief of Mission, Dame Ann Hercus, during her press conference of 14 April 1999 at the Ledra Palace Hotel in the United Nations-controlled buffer zone in Cyprus:

> "We are here by consent. The day consent is withdrawn or collapses is the day United Nations peacekeepers pack up their bags and go home. Consent and cooperation of the parties to a conflict are essential for peacekeepers to perform their role. They can assist the conflicting parties in implementing a ceasefire or subsequent settlement. But a peacekeeping operation cannot do this without that general consent which is the basis of its being here."

Furthermore, the high-level Panel on United Nations Peace Operations, which was convened in March 2000 under your auspices to undertake a thorough review of the United Nations peace and security activities, concluded the following as the guiding principles of United Nations peacekeeping operations:

> "The Panel concurs that consent of the local parties, impartiality and use of force only in self-defence should remain the bedrock principles of peacekeeping." (Findings of the Brahimi report as contained in your letter of 21 August 2000, A/55/305-S/2000/809.)

As for the Greek Cypriot assertions on the 1960 Treaties of Guarantee and of Alliance, I wish to recall that this is not the first time that the Greek Cypriot administration, which has, since December 1963, usurped all the powers and functions of the bi-national Government of Cyprus, is challenging the validity of the Treaties which established and guaranteed the state of affairs on the island, namely, the partnership of two politically equal parties, non-domination of one over the other, effective participation in the Government and complete autonomy in communal affairs, while restricting the independence of the island in order to protect the partnership structure of the establishment.

The present Greek Cypriot administration is not the bi-national Republic that the Treaties envisaged and it is not governed by the basic articles of the 1960 Constitution. Those basic articles, which had been incorporated from the Zurich Agreement, could not, by virtue of article 182 of the Constitution, in any way be amended — whether by way of variation, addition or repeal. This was not simply a question of domestic constitutional law, as the Treaties themselves elevated the

matter to the domain of international law. It may suffice to refer here to the 1987 report of the Select Committee of the British House of Commons, in which it is stated:

> "Although the Greek Cypriot Government had been claiming to have been merely seeking to operate the 1960 Constitution, modified to the extent dictated by the necessities of the situation, this claim ignores the fact that both before and after the events of December 1963, the Government of Archbishop Makarios continued to advocate the cause of *enosis* and actively pursued the amendment of the Constitution and the relevant Treaties to facilitate this ultimate objective. In February 1964, for instance, Archbishop Makarios declared 'The Agreements have been abrogated and buried'."

From December 1963, Greek Cypriot gunmen and police under the command of the Minister of Interior drove the Turkish Cypriots out of their homes and posts, as Archbishop Makarios declared that he no longer recognized the office of the Turkish Cypriot Vice-President and offered minority rights to the Turkish Cypriots while claiming to be the "Government of Cyprus" in complete disregard of the Constitution, the state of affairs created by the 1960 Agreements and the raison d'être of the Agreements themselves.

It may be recalled that Turkey took military action in Cyprus on 20 July 1974 under article IV of the Treaty of Guarantee. At that time, the coupist "government" of Mr. Nicos Sampson, who came to power after Archbishop Makarios escaped into exile, was no more than a puppet government acting under instructions from Greece, ready to order the end of any vestiges of the island's independence and cede it to Greece. Mr. Sampson himself admitted that he was about to proclaim *enosis* (union with Greece) when he had to resign (*Cyprus Mail*, 17 July 1975). According to the foreign press, there were 20,000 Greek army personnel in the island at the time of the coup, preparing to realize the union of the island with Greece. This force was introduced into Cyprus, first clandestinely, then overtly, by Archbishop Makarios during the years 1963 and 1964 in preparation for *enosis* at the appropriate time.

The Turkish position during the critical debates at the United Nations Security Council from 1964 to 1974 has been that the Treaty of Guarantee is valid and has to be respected under the doctrine of *pacta sunt servanda*, and that it gave the guarantor powers the right to take military action solely or jointly, after having carried out the requisite consultations provided in the Treaty itself. The United Nations Security Council passed no judgement on the Greek Cypriot position on the matter, but by having referred to the "authority of international agreements" in its resolution 353 (1974) of 20 July 1974, the Council reinforced the argument for the validity of the international instruments, particularly the Treaty of Guarantee.

The interpretation of article IV of the Treaty should create no difficulty once one pays due regard to the recent history of Cyprus and the intentions of the parties. Cyprus gained independence after a sanguinary conflict which was not caused by a struggle for independence. This struggle was characterized by fierce communal trouble. Each of the national communities had differing aspirations. The aim of the Greek Cypriots was union with Greece (*enosis*), which would be tantamount to changing colonial masters for the Turkish Cypriots. The granting of independence in 1960 was an agreed compromise between the parties concerned. It was therefore necessary that strong guarantees should be devised so that the state of affairs established by the Zurich and London accords and the 1960 Constitution of Cyprus

could be preserved and that union of Cyprus with any other State be effectively prohibited. These basic considerations suggest that, in drafting article IV, the guarantor States meant to preserve the right to resort to military action as and when the state of affairs created by the Agreements was threatened from within or from outside. On the other hand, since common or concerted action would not always be possible, each guarantor State was given the right to take unilateral action.

It is clear that before the 1974 Turkish intervention every procedural requirement was fulfilled. Following the Sampson coup, consultations took place in London on 17 and 18 July, between the British and Turkish Governments; the Foreign and Commonwealth Secretary James Callaghan met the Turkish Prime Minister Bülent Ecevit and discussed the action to be taken following the coup. The Greek Government, though invited, did not attend. The consultations were described by the Foreign and Commonwealth Office as abortive, but it was clear that Britain was not willing to intervene jointly with Turkey as a guarantor Power and it was also clear that it recognized the possibility of military action by Turkey. Britain and Turkey, thus fulfilled the obligation of holding consultations (1987 report of the House of Commons Select Committee on Cyprus, on p. vii, sect. 9 and p. viii, sect. 12).

Article IV of the Treaty of Guarantee mentions a "right to take action". It is true that the word "military" has not been used to qualify the word "action" and this has led some authors to the conviction that article IV does not sanction military action but authorizes intercession only, such as diplomatic representations and economic countermeasures. In fact, the first paragraph provides for consultation "with respect to the representations or measures necessary to ensure observance" of the provisions that have been breached. The second paragraph of the article in question, by providing for concerted action, or the right of any of the guaranteeing powers to take action, is stronger in terms than the first paragraph. If it were intended to restrict the meaning of the word "action" to any action other than military, it would have been easy for the drafters to do so expressly, or to use words of lesser import. In fact, it is clear that it was left to the guaranteeing Powers, or any one of them, to decide what action to take. Otherwise the second paragraph would be a dead letter unable to serve the purpose it was designed to serve.

It should not be forgotten that from 1963 to 1974 Turkey and Britain, on many occasions, both in the course of debates at the Security Council and directly, made repeated representations to the "Makarios government" to stop violating the basic articles, as well as the rights of the Turkish Cypriots, but without effect. The Greek military coup was a new and major military action which had to be met by an effective counteraction.

Taking into consideration the fact that the principal object and purpose of the 1960 Agreement was to settle a problem, which was loaded with the potential danger of a Greco-Turkish war, and to protect domination of one community by the other, it can be deduced that the guarantors meant to provide effective guarantees in the eventuality of breach of the Treaty. An effective guarantee could be nothing less than military intervention, because it could not be expected that union of Cyprus with any other State, namely Greece, could be effectively prevented by mere diplomatic efforts of intercession, which in any case, can always be resorted to by any State without the sanction of an international treaty. Moreover, it would not

really be necessary to conclude a treaty of guarantee in order to enable a guaranteeing Power only to intercede by making diplomatic representation.

It is a principle of international law that treaties can be changed only by the consent of the interested parties. It should also be noted that the right of intervention that the guarantor Powers reserved under the Treaty of Guarantee, was not a right carved out of an already independent Cyprus Republic in favour of third States. The word "reserved" was used deliberately because the signatories who had been recognized long ago as interested parties in the Cyprus dispute, already had rights linked to the future of the Cyprus Republic. The Treaty of Lausanne of 1923 had established a political and military balance of power in the area. Union of Cyprus with Greece would upset that balance of power.

Cyprus accepted being an independent State subject to the state of affairs created by the 1960 Agreements. The wording of the Treaty of Guarantee prohibited union of the Republic with any other State and bound it by an obligation to maintain its partnership independence, as well as the state of affairs created by the Agreements. The Treaty was not therefore a derogation from an already existing full independence, but a guarantee of an independence which came into being as a result of, and as specified by, international agreements as a compromise between the opposing aspirations of the two national communities.

International law presumes the validity of international agreements unless changed or repealed by the parties or declared otherwise by the competent tribunal. In fact, respect for pledges and commitments embodied in international treaties is the foundation upon which stability in international relations is achieved. In the case of Cyprus, the 1960 Agreements gave each party certain rights and privileges in return of each of them making certain concessions from their original positions. Thus, Great Britain reserved for itself sovereign bases and relinquished its sovereignty over the rest of the island as a British colony; Turkey and the Turkish Cypriots abandoned their demand for partition in consideration of Greece and the Greek Cypriot side abandoning *enosis* and affirming the rights of the Turkish Cypriots as provided for in the state of affairs so created. The Greek Cypriot attempt to change the state of affairs in its favour by resorting to force of arms carried with it the consequential result of *enosis*, or failing that, a revised state of affairs in the light of developments. Whatever the result, the Greek Cypriot side could not in law and in fact replace the bi-national partnership Republic of Cyprus, comprising two peoples distinct from the point of view of culture, language, religion and ethnic origin, by a Greek Cypriot republic claiming to be the legitimate successor to that partnership Republic.

The Turkish intervention of 1974 cannot be evaluated in isolation from the recent history of Cyprus, the chain of events which started with the Greek Cypriot determination to destroy the partnership character of the Republic and convert it into a Greek Cypriot republic as early as August 1960 when the Agreements were signed, as well as the events which led to the Greek coup d'état, the aims and effects of which have been expressed by Archbishop Makarios at the United Nations Security Council. He said that the Greek military regime had openly violated the independence of Cyprus, had extended its dictatorship in the island and that this amounted to an invasion from the effects of which both Greeks and Turks would suffer (United Nations, Official Records of the Security Council, S/PV.1780). One should not forget that the raison d'être of the Turkish intervention was to put an end

to Greece's invasion, to protect Turkish Cypriots from imminent attack and to help to restore the relevant state of affairs on the island.

It should also be mentioned that the European Court of Human Rights has not pronounced upon the validity or otherwise of the Treaties nor on the legality of the Turkish intervention of 1974. The judicial organs of the Council of Europe have refrained from deciding on these matters even though some superficial conclusions, not supported by facts, have been drawn from the Turkish "military presence" in Northern Cyprus for purposes of "responsibility" under the Convention.

The allegation made by the Greek Cypriot representative to the effect that the Turkish Republic of Northern Cyprus "has no territory" demonstrates the Greek Cypriot obsession with myths, rather than realities. If this was correct there would have been no need to talk about "territory" and "territorial adjustments" in the long-standing talks held between the two parties. Furthermore, these terms would not have been referred to over the years in various relevant United Nations documents. No one can deny the existence of two separate and exclusive State authorities in Cyprus, one in the northern and the other in the southern part of the island, as was also acknowledged by the Geneva Declaration of 30 July 1974 of the Foreign Ministers of the three Guarantor Powers (Her Majesty's Stationary Office, Misc. No. 30 (1974), Command Paper 5712). Moreover, as early as in 1977 the parties themselves confirmed the existence of two separate territories in the island by referring to the "territory under the administration of each community" in the Denktaş-Makarios guidelines of 1977. Rather than being obsessed with myths, the Greek Cypriot side needs to come to terms with the realities on the island and not keep on denying the existence of the Turkish Cypriots by presuming that they are living in a "vacuum". The Turkish Cypriot people enjoys a full democratic system with its own independent State comprising political and legal institutions.

It is not surprising that the Greek Cypriot representative, whose administration prefers to prolong the humanitarian issue of missing persons and to callously exploit the agony of its own people, chooses to refer to the distortion broadcast by Greek Cypriot *Sigma* television, of an interview by President Rauf R. Denktaş of 1 March 1996 in which he reiterated a fact which is already well known and acknowledged by prominent third parties, namely that all "missing persons" on both sides in Cyprus must be presumed dead. It is significant to note, in this context, that the then Deputy Special Representative of the United Nations Secretary-General in Cyprus, Mr. Gustave Feissel, made a statement on 5 March 1996, corroborating this fact, by saying that "no one has ever given the United Nations Committee on Missing Persons any information, evidence, anything at all, which would suggest that anybody is still alive somewhere".

I would greatly appreciate if you would have the text of the present letter circulated as a document of the General Assembly, under agenda item 64, and of the Security Council.

(*Signed*) Aytuğ **Plümer**
Representative of the Turkish Republic of Northern Cyprus